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Proposed Bill 5249
Public Hearing: March 3, 2022

TO: MEMBERS OF THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 3, 2022

RE: SUPPORT OF RAISED BILL 5249 AN ACT CONCERNING NONCOMPETE AGREEMENTS

CTLA strongly supports this bill which places reasonable limitations on the right of employers to force their employees to sign non-competition agreements as a condition of employment. The bill is adopted in part, from Conn. Gen. Stat. 20-14p, which places similar restrictions on non-competition agreements for physicians. We see no reason that carpenters, veterinarians, automobile salesman, and restaurant workers should be treated any differently than Doctors.

These past couple years, many clients have lost their jobs due to the economic impact of COVID, and who had also signed non-competition agreements as a condition of their employment. Under existing law, if these individuals have non-competition contracts, these individuals have lost their livelihood due to no fault of their own, and they are banned from finding comparable work in their chosen filed. This is an unconscionable result and should not be allowed to continue.

Competition is generally a good thing for Connecticut's economy. Healthy competition promotes fair pricing for goods and services, innovation, and motivates companies to provide better services.

Competition in the labor market is also a good thing. It encourages employers to pay fair wages and provide reasonable benefits to maintain their workforce, and gives employers an incentive to reward their most valued and productive workers. The ability of individuals to move freely to pursue better career and professional opportunities also benefits Connecticut's economy.

Covenants not to compete frequently create unreasonable restrictions on employees that run counter to this purpose. For example, a large plumbing company may use these restrictions to prevent a talented, entrepreneurial employee from starting his own business and providing competitive services at lower rates.

This permits the larger company to maintain monopolistic advantage in the local service area. An insurance broker may terminate an older long-term salesperson, and then prevent that person from doing the job that he has been doing his entire lifetime. The salesperson loses the advantages of the connection, knowledge and expertise that he has built up over his professional lifetime.

Employees generally have no right to refuse to sign a covenant not to compete if they want the job. Covenants not to compete are not the result of negotiated terms between equal parties. Employees who want a job to have no choice but to sign an employer's covenant not to compete.

The proposed bill codifies existing law on the reasonableness of non-competition agreements with several important limitations.

1. One Year Limitation on Covenants Not to Compete

The proposed bill limits covenants not to compete to a time period of less than one year. Limitations on an individual's ability to return to the job market of greater than one year make it exceedingly difficult for trades persons, professionals, and individuals with specific expertise to remain relevant in their professions. The potential for long term damage to one's career extends far beyond the time period of the covenant not to compete. An exception is made (up to two years) when the employer agrees to provide at least one full year severance.

2. Covenants Not to Compete Shall Not Be Imposed on Low Income Workers

The proposed bill prohibits covenants not to compete for workers who earn less than two times the minimum wage. There is no public policy or any other business justification for imposing covenants not to compete upon low income workers, and it should be prohibited.

The burden of non-competition agreements is felt most heavily by low income workers. They have the least resources to deal with any restraint on their ability to find other work. They do not have the resources to move away from the restricted geographic area. The burden of their being out of the job market is much more likely to require state assistance and impose significant costs on the state.

In addition, low wage workers generally do not have access to confidential information, trade secrets, and managerial control that in other instances may justify certain restrictions. Younger people just entering the marketplace are also in this category and should not be burdened by such restraints.

3. Covenants Not to Compete Shall Not Be enforceable if the Employer Discharges the Employee or the Employee Leaves for Good Cause Attributable to the Employer

This bill prevents employers from enforcing a non-competition provision if they terminate an employee or if the employee feels compelled to leave for good cause attributable to the employer.

Connecticut is an at will state. An employer can choose to fire an employer for economic reasons, legitimate reasons, illegitimate reasons, or no reason at all. A discharged employee rarely has recourse. When an employer discharges an employee, it makes no sense to enforce a non-competition agreement against the employee. The employer has made a choice that it no longer needs the employee. It should not be able to impose the additional burden of preventing that employee to pursue his livelihood.

This bill also extends this protection employees may also feel compelled to leave their jobs for good cause: their wages are cut significantly, their work responsibilities are reduced or changed dramatically, they are victims of harassment or discrimination, or the company relocates to a distant location. When employees leave their jobs for good cause, they also should not pb prevented from seeking work in their livelihoods.

When an employee is involuntarily terminated or leaves for good cause, they will have the added obstacle of having to explain why they lost their job to prospective employers.

Covenants not to compete only make sense to protect the employer from employees who leave voluntarily to open their own business or to work for competitors. This does not apply when the company discharges the employer.

The public policy of permitting discharged employees open and unfettered access to the labor marketplace and discouraging prolonged and extended periods of unemployment for Connecticut's workforce. There is no competing interest that justifies permitting employers to enforce covenants not to compete when they choose to discharge employees.

4. Employees Are to Be Given a Ten-Day Grace Period to Sign a Covenant Not to Compete and Are to Be Advised That They have the Right to Consult with Counsel Prior to Signing

Many employees do not even realize that they are signing Covenants Not to Compete when they begin working. Most certainly do not consider or appreciate the ramifications of a Covenant Not to Compete when they are beginning a new job. This proposed notice period and notification about consulting counsel is designed to underscore to employees the serious legal obligations of a covenant not to compete and encouraging them to fully understand them prior to signing it. The burden on employers of providing this is minimal, and only requires a simple modification of the documents and procedures.

5. This Proposal Does Not Affect Employer's Interest in Protecting Their Existing Customers, Confidential Information, and Trade Secrets

This proposal will not have any impact on Company's ability to require Restrictions of the use and dissemination of confidential and proprietary information and trade secrets. Likewise, it will not affect a Company's right to protect itself from the solicitation of customers by departing employees. We believe that this proposal provides a reasonable balance between the need of businesses to protect these legitimate interests and the compelling economic public policy of allowing Connecticut workers, particularly low-income workers, free and unfettered access to our labor market.

WE URGE YOU TO RAISE AND PASS HB5249. Thank you.